No. 71-791

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E. ROBERT SEAVER, CLE

In the Supreme Court of the United States

OCTOBER TERM, 1971

EUGENE H. ROMAN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner was indicted in the Northern District of West Virginia for receipt and concealment of a motor vehicle stolen while moving in interstate commerce, in violation of 18 U.S.C. 2313. Prior to trial, the district judge ordered that evidence of the car, which had been seized pursuant to a search warrant in the garage of petitioner's home, be suppressed, on the ground that the affidavit supporting the warrant did not establish probable cause (Pet. App. 10-13). The court of appeals held that the affidavit was sufficient under this Court's decisions in *Spinelli* v. *United States*, 393 U.S. 410, and

United States v. *Harris*, 403 U.S. 573, and accordingly reversed (Pet. App. 6-9).

The claim that probable cause was not established is fully discussed and answered in the opinion of the court of appeals, on which we rely. We note further that petitioner's challenge to the determination of the court of appeals turns on the particular facts of this case, and does not present an issue of general significance.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

JANUARY 1972.

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